Issue 15c Market Share Should Be The Primary Factor Used By The Commission In Its Evaluation Of The LECs' Market Power

TW Comm concurs with the Commission that market share should not be the sole determining factor of whether a firm possesses market power,[64] but believes that it is one of the most important factors because market share reflects actual changes in the marketplace rather than the theoretical possibility of structural change. The ultimate indicator of whether a LEC faces real, rather than hypothetical, competition is whether potential competitors have gained and currently hold significant market share. Thus, the market share factor should be given more weight than any other factor. Although a continued high market share by LECs does not necessarily mean that they have complete market power, there is a high correlation between market share and market power.

Market share reflects consumers' actual purchasing decisions and thus provides stronger evidence of the degree to which competitors have successfully entered the market, attracted customers and retained customers than do the other criteria identified in the NPRM. The Commission has asked what data and information would be necessary to assess the relative market shares of the LECs and their competitors.[65] As noted in one of the Commission's reports, all carriers with interstate revenues have been required to file annual Telecommunications Relay

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[64] AT&T Reclassification Order at para. 68.

[65] LEC Pricing Flexibility NPRM at para. 143.

Service Fund Worksheets since 1993.[66] These worksheets enable the Commission to compare separately the revenues associated with several categories of relevant services such as local exchange service and access revenues for the incumbent local exchange carriers and for other providers.[67] As of 1993, CAPs' revenues for intrastate and interstate access were approximately $96 million and LECs' revenues for intrastate and interstate access were $30.6 billion, more than 300 times as much as those of the CAPs.[68] This report show that as of 1993, incumbent LECs' revenues for local exchange service were approximately $40 billion, and, as with the access services market, there was not remotely any competition.[69] Clearly with such an extremely skewed market share distribution, there is no need to gather data at any further level of granularity for the foreseeable future. Ultimately, the Commission may need to revise reporting requirements so that it can gather and evaluate market share data

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[66] Trends in Telephone Service, Common Carrier Bureau, February 1995 at 40.

[67] Id. at 43.

[68] Because these are revenue data rather than data on product quantities (e.g., number of voice-grade equivalent private lines or number of DS-1 circuits), they reflect a combination of the relative demand for LECs' competitors' services and the prices that LECs and competitors are able to sustain.

[69] Trends in Telephone Service at 43. Cellular service carrier revenues were $19 million, pay telephone operators' revenues were $10 million; and resellers local exchange service revenues were $21 million.

that correspond with the product and geographic markets the Commission establishes.

Issue 15d LECs' Pricing Of Services Under Price Cap Regulation Should Be Considered But Afforded Significantly Less Weight Than The LECs' Market Share

In its evaluation of the competitiveness of AT&T's business services, the NPRM notes that after 638 tariff filings in the Business Services Basket 3, AT&T did not exceed the price cap ceiling for that basket and stated, "[w]e believe that these lower-than-required prices for Basket 3 services reflect the competitiveness of business services."[70] The pricing behavior of LECs similarly may provide clues about the competitiveness of the local market, but such evidence should be examined carefully.

However, the Commission appropriately observes that a LEC's lower-than-required pricing of services is not a reliable measure of competition in markets that lack high supply and demand elasticities.[71] Should the Commission determine that the market is characterized by high supply and demand responsiveness, only then should the Commission consider the pricing behavior of the LECs. Evidence that a price cap LEC is pricing services below the price cap ceiling over a sustained period of time may be evidence that high supply and demand elasticities exist. It could also be a result of other factors and therefore such pricing by LECs should not be given great weight. In assessing

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[70] Interexchange Order at para. 49.

[71] LEC Pricing Flexibility NPRM at para. 145.

any lower-than-required pricing, however, the Commission should also evaluate the presence of any common costs in the market under scrutiny because it is possible that the shifting of common costs from one market to a less competitive market is the reason for the relatively low prices. In this case, the pricing of services below the price ceiling may be an effort on the part of the LEC to create an economic barrier to entry.

Issue 15e The Presence Of Common Costs Is An Essential Factor That The Commission Should Analyze In Any Evaluation Of The Competitiveness Of A Market

While demand and supply responsiveness should be a factor in determining the level of competition, the distinction between resellers and facilities-based providers must be consistently maintained. Ultimately, the Commission should rely on several measures of market power in order to determine if LECs should be granted any pricing flexibility in any of their markets. In its decision that AT&T be classified as non-dominant,[72] and in its decisions in Docket Nos. 90-132 and 93-137, the Commission evaluated appropriate economic criteria: demand elasticity; supply elasticity (in particular of existing competitors); the relationship of AT&T's prices to the price cap; market share; the cost structures of AT&T and of its competitors;

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72 Because this decision was issued in October 1995, it could not have been referenced in the LEC Pricing Flexibility NPRM. Nonetheless, TW Comm believes that the analysis reflected in the AT&T nondominant order is directly relevant to this LEC Pricing Flexibility NPRM, and therefore refers to that decision as well as the two referenced AT&T dockets.

and AT&T's size and resources.[73] This analysis necessarily and appropriately encompassed an assessment of entry barriers.

TW Comm supports the Commission's reliance on these same measures of market power for evaluating the level of competitiveness in the access services market. In addition, for the reasons discussed above, it is essential that the presence of common costs among adjacent geographic and/or product markets be assessed as part of any evaluation of the competitiveness of a market. If there is compelling evidence of effective competition in all the relevant product markets within a LEC's geographic market, the presence of common costs will be immaterial, but so long as LECs offer monopoly and competitive services and/or serve monopoly and competitive geographic regions, the pervasive presence of common costs should be a primary consideration in the evaluation of LECs' market power. Finally, in assessing the competitive marketplace, the single most important factor is whether or not facilities-based competitors have managed to both obtain and retain more than a thirty percent market share.

Market share should be the primary criterion used by the Commission in its assessment of the presence of LEC market power, because market share, unlike the other criteria, reflects actual changes in the marketplace rather than speculative ones.

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[73] See AT&T Reclassification Order.